



## Analysis of Department of Homeland Security (DHS) FY 2012 Service Contract Inventory

### Introduction

Section 743 of Division C, of the Fiscal Year (FY) 2010 Consolidated Appropriations Act, Pub. L. 111-117 requires civilian agencies to prepare an annual inventory of their service contracts, and to analyze the inventory to determine if the mix of federal employees and contractors is effective or if it requires rebalancing. This report provides information from the Department of Homeland Security (DHS) to meet this requirement.

In March 2010, DHS established the Balanced Workforce Program Management Office (BW PMO)<sup>1</sup> within the Office of the Chief Human Capital Officer (OCHCO) to develop and implement a process designated as the Balanced Workforce Strategy (BWS). In August 2010, the BWS was created as a comprehensive and repeatable risk based approach to comply with relatively new policies, statutes, regulations, and guidance issued by the President, Congress, OMB, and DHS leadership that relate to managing the total workforce—both federal employees and contractor personnel. The goal of the BWS is to:

- ensure compliance with applicable statutes, regulations, and policies, through a repeatable, documented decision-making process;
- determine the proper workforce balance for each Component activity; and
- reduce mission risk while, as practicable, reducing or controlling costs.

In collaboration with the Office of the Chief Procurement Officer (OCPO), the Office of the Chief Financial Officer (OCFO), and the Office of General Counsel (OGC), the BW PMO developed and vetted a three-step methodology to conduct analyses of the Department's service contracts. The current review process requires Components to apply a BWS review to proposed requirements for services in select Product and Service Codes (PSCs) designated on the Special Interest Function (SIF) list. DHS focused on these special interest functions because they could be potentially closely associated with inherently governmental functions, or were critical to ensuring control of the DHS mission.

While this review criterion applies to a limited number of requirements, additional OCPO policies and procedures require Component review of all service contracts to ensure full compliance with the Federal Acquisition Regulations and OFPP Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions*.

This report is organized according to the categories established in OMB's December 19, 2011 Memorandum to Chief Acquisition Officers and Senior Procurement Executives on the subject of Service Contract Inventories for FY 2012.

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<sup>1</sup> In September 2013, OCHCO renamed the BW PMO as the Office of Strategic Workforce Planning and Analysis (SWPA) and added additional, related functions. The Balanced Workforce Strategy Division within SWPA conducted this analysis.

## I. Special Interest Functions Analyzed and Dollars Obligated in FY 2012

On November 1, 2013, the BWS Division provided Components with a list of the BWS analyses completed in the automated BWS Tool, v.1xxv or v.2 from September 2011 to December 2012.<sup>2</sup> The list contained completed Component BWS analyses used to award or exercise service contracts let in FY 2012 from the DHS SIF list PSCs, with an ultimate value equal to or above the simplified acquisition threshold (SAT) of \$150,000.<sup>3</sup>

By November 27, 2013, Components were required to review their FY 2012 BWS analyses list, identify applicable analyses, and produce a report outlining all requirements analyzed as part of the BWS proposed requirements for services pilot. The review provided in this report is based on information provided by the Components. DHS' special interest functions are listed in the chart below.<sup>4</sup>

PSC	DESCRIPTION OF FUNCTION
<i>Special Studies/Analysis — Not Research &amp; Development (R&amp;D)</i>	
B505	Special Studies/Cost Benefit Analyses
<i>Professional/Administrative/Management Support Services</i>	
R406	Policy Review/Development Services
R408	Program Management/Support Services
R410	Program Evaluation/Review/Development Services
R413	Specifications Development Service
R423	Intelligence Services
R425	Engineering and Technical Support Services
R497	Personal Services Contracts
R499	Other Professional Support Services
R699	Other Administrative Support Services
R707	Contract/Procurement/Acquisition Support
R799	Other Management Support Services
<i>Information Technology Support Services</i>	
D302	IT & Telecom Systems Development Services
D307	IT & Telecom – IT Strategy and Architecture
D310	IT & Telecom – Cyber Security & Data Back-up
D314	IT & Telecom – System Acquisition Support
D399	IT & Telecom – Other IT & Telecommunications

**Dollars Obligated in FY 2012.** The total amount obligated for contracts in the 17 SIF list PSCs was \$5,093,009,882; the total amount obligated for the subset of contracts reviewed using the BWS process is approximately \$1,064,708,790.

<sup>2</sup> FY 2012 contracts include data from the automated BWS Tool, Version 1.xxv and Version 2. The BWS new work pilot (Version 2) began November 2011. Data from Version 1.xxv covers prior contracts from September 2011 to November 2011.

<sup>3</sup> The Simplified Acquisition Threshold applies to the total contract value: base plus option years.

<sup>4</sup> The Department adopted a subset of codes previously recommended by OMB and added two additional codes for functions identified as critical.

## II. Methodology Used to Support Analysis

The Department based this report on analyses generated through the automated BWS Tool, v.1xx and v.2, an automated decision support survey. The automated BWS Tool analysis enables Components to categorize work as an inherently governmental function (in accordance with OFFP Policy Letter 11-01, FAR 7.5, HSAM 3007.5), personal services (in accordance with FAR 37.1), closely associated with an inherently governmental functions (OFFP PL 11-01, OFPP M-09-26 memo, FAR 7.5 & 37.1, Section 736), or a critical function (OFPP PL 11-01).

The automated BWS Tool, v.2 analysis further includes assessment of possible mission risk, level of contractor oversight and management needed, mitigation strategies, and cost analysis. Based on the analysis, the automated BWS Tool, v.2 provides a recommended sourcing decision—whether the work is appropriate for federal or contract performance, or a combination. For the purposes of this report, the Department focused on contracts awarded or exercised in FY 2012.

## III. Summary of Findings

Components analyzed 187 requirements in the 17 SIF list PSCs, with an ultimate value equal to or above the SAT of \$150,000. The 187 contracts underwent analysis using the automated BWS Tool, version 1.xxv or version 2. Below are the total number of contracts analyzed in each PSC code and the number of analyses based on the sourcing decision recommended by the BWS Tool used.

PSC	# OF ANALYSES
B505	12
D302	20
D307	15
D310	3
D314	2
D399	9
R406	3
R408	47
R410	5
R413	0
R423	1
R425	12
R497	0
R499	21
R699	27
R707	3
R799	7
Total	187

SOURCING RECOMMENDATION	#
Must be Federal Workers	1
Should be Federal Workers	6
Temporarily Contract Until Feasible to Hire Federal	84
Combination Federal Workers and Contractors	20
Should be Contract	76
Total	187

The only BWS Tool recommendation resulting in “Must Be Feds” was for an order issued by the Transportation Security Administration (TSA) in September 2012. Although the Tool provided

this initial recommendation, upon further review of the statement of work, it was determined that the requirement should have been classified as “Should Be Feds” because the work was closely associated with inherently governmental functions but was not inherently governmental. For purposes of follow-up, the Department will address this contract as it does the other contracts identified as “Should be Feds”.

As a follow-up action, the Department requires Components to provide an update regarding their actions taken to mitigate risk during performance of each contract identified as “Should Be Feds”. The mitigation strategies implemented by the Components ensure there is appropriate governmental oversight of the “Should be Feds” contracts so closely associated with inherently governmental functions do not expand to include inherently governmental functions.

According to these findings, 111 of the contracts (representing approximately 59 percent of the total) might require some level of workforce rebalancing in order to ensure DHS has proper control over its function and mission.<sup>5</sup>

#### **IV. Outcomes Achieved in Accordance with Section 7439(e) (2)**

##### **1. Any personal services contract listed in the inventory has been executed, and is being performed, according to applicable laws and regulations.**

The BWS analysis of SIF list contracts addresses personal services and indicates that DHS is in full compliance with FAR Part 37.104, only entering into personal services contracts authorized by statute. The automated BWS Tool, v.2 determines if a contract may have inadvertently entered into the realm of personal services with the following question:

If contracted, would this function establish an employer-employee relationship between the Federal Government and a contractor?

- Yes (which leads to a follow-up question: There are some statutory provisions that allow the Department to obtain personal services through contract, rather than through the normal process of hiring employees through civil service appointments. Do any of the following exemptions apply to the function you are analyzing?)
- No (which leads to the next question in the BWS Tool)
- I need more information on "personal services contracts." (which leads to a description of Personal Services contracts)

##### **2. As set forth in FAR 37.114, the agency is giving special management attention to functions that are closely associated with inherently governmental functions.**

BWS analysis includes items on the automated BWS Tool, v.2 to assess the extent to which a function might be closely associated with inherently governmental functions. Once identified,

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<sup>5</sup> Contracts identified for rebalancing based on total contracts identified minus contracts with sourcing recommendation “should be contract”.

the Component determines if federal employees should perform the function or whether contractors should perform the function with greater scrutiny or an enhanced degree of oversight to ensure the Department maintains control of its mission.

**3. The agency is not using contractor employees to perform inherently governmental functions.**

In the Department's review of the SIF contracts, three contracts were identified, as "Must be federal workers." In these 3 cases, only federal employees may be considered.

**4. The agency has specific safeguards and monitoring systems in place to ensure that work being performed by contractors has not changed or expanded during performance to become an inherently governmental function.**

DHS depends on well-trained Contracting Officer Representatives (CORs) to advise Contracting Officers that contractors do not inadvertently assume inherently governmental functions (defined as "scope creep") during contract performance. The automated BWS Tool, v.2 includes an evaluation of the risk that the function will evolve into inherently governmental work.

**5. The agency is not using contractor employees to perform critical functions in such a way that could affect the ability of the agency to maintain control of its mission and operations.**

The automated BWS Tool, v.2 looks at critical functions and whether the Department has sufficient internal capability to control its mission. Items on the BWS Tool's Sufficient Internal Capability Test (ICT) that address this issue include:

- Relationship of the work to the Department's mission;
- Complexity of the function;
- Extent of sufficient in-house capability to perform the function;
- Impact of contractor ceasing performance; and
- Risk of function evolving into inherently governmental (i.e., restricted) work.

By responding to these items, Components can determine that contractor employees are used appropriately, enabling DHS to control its mission.

**6. There are sufficient internal agency resources to manage and oversee contracts effectively.**

The automated BWS Tool, v.2 directly requests information from Components about the number of federal workers providing oversight and management of service contracts in relation to the

number of contractors. In addition, Components provide information about the sufficiency of contract management through the availability of appropriately trained and experienced contract administration staff. DHS uses technical subject matter experts (SMEs), in addition to CORs and Contracting Officers, to administer its complex contracts.

## **V. Explanation of actions taken or planned to resolve weaknesses**

As indicated in the previous year's report, in September 2012 the Department began the development of an enhanced system to address weaknesses and limitations in the automated BWS Tool, v.2. The BWS Division completed the development of the new Balanced Workforce Assessment Tool (BWAT) in September 2013. The BWAT builds upon existing DHS Enterprise Architecture—the SharePoint web application—to generate a more consistent and efficient analysis of proposed requirements for services. The BWS Division is currently deploying the BWAT to DHS Components in a phased approach; the BWS Division intends to complete deployment by January 2014.

The BWAT system improves the overall efficiency of the analysis process and resolves a number of limitations in the automated BWS Tool, v.2:

- The BWAT centralizes and standardizes the review process for all new proposed requirements for services equal to or above the SAT across DHS. The system consolidates the manual Acquisition Alert 11-30 Written Determination Template process with the BWS process into one unified electronic system.
- The streamlined Internal Capability Test (ICT) and sourcing recommendations in the BWAT allow Components the ability to prioritize contracts that may require increased management attention and oversight to ensure that work does not evolve into contractors performing inherently governmental functions and (in the case of critical functions) ensure that the agency does not lose control of its mission and operations.
- The BWAT facilitates an integrated approach to management of the multi-sector workforce. Enhanced functionality allows Components to implement the BWAT in a manner that increases accountability between Component lines of business: human capital, acquisition, finance, legal, and procurement. This includes the ability to electronically route and review analyses and the ability to upload and edit documents such as SOWs, IGCEs, and the DHS Cost Module.
- The system addresses major functionality limitations in the previous automated BWS Tool. The BWAT allows for multi-functional analysis, improved user navigation, analysis status tracking (once electronically routed), and is Section 508 compliant.

In FY 2014, DHS will:

- Complete BWAT deployment enterprise-wide. The Department mandated the use of the newly developed BWAT in FY 2014 for all proposed requirements for services equal to or above the SAT. The Department will use BWAT data for its FY 2014 service contract

analysis. For FY 2013, the Components continued to use the BWS Tool, v.2, for their requirements analyses and the Department's FY 2013 service contract analysis will be based on data from the BWS Tool.

- Consolidate and unify the BWS guidance and the acquisition policy found in the DHS Acquisition Alert 11-30 - Written Determination Template.
- Establish the framework for an audit process to ensure the consistency and effectiveness of Component BWAT implementation and use.

Utilizing the BWS has allowed DHS to make significant progress in:

- achieving the appropriate mix of federal and contractor skills, expertise, experience and other assets necessary to effectively achieve the Department's mission;
- ensuring that inherently governmental functions and unauthorized personal services are not performed by contractors;
- dedicating an adequate number of federal employees to the performance of critical functions or functions that are closely associated with inherently governmental such that the Department can maintain control of its mission and operations;
- giving consideration to using, on a regular basis, federal employees to perform new functions and functions that are performed by contractors that could be performed by federal employees (and Special Consideration to the use of federal employees in those areas specifically identified by law); and
- integrating management and planning activities to reduce risk to the Department's mission and promoting improvements in the Department's economy, efficiency, and performance.

The Department provides guidance to Components to use enhanced requirements within statements of work (e.g., limit contractor discretion, improve quality control, and strengthen contractor reporting requirements) to address risk mitigation. As Components complete the BWS Tool, they describe risk mitigation strategies to compensate for any potential loss of mission control, if they determine that they do not concur, or concur in part, with the recommendation of the BWS Tool. These mitigation strategies deepen contract oversight through the use of: detailed inspection techniques; enhanced monitoring of contractor performance; added reporting requirements; and supplemental training for the contract administration team.

The BWS Division will continue to work in conjunction with representatives from the Office of the Chief Procurement Officer, Office of the Chief Financial Officer, and the Office of General Counsel to update BWS policy to incorporate OMB guidance on managing the balance of the workforce.